

**Before the
U.S. DEPARTMENT OF COMMERCE
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION
Washington, D.C. 20230**

In the Matter of)	
)	
Proposed Scope of NTIA's Authority)	Docket No. 151209999-5999-01
Regarding FirstNet Fees)	RIN 0660-AA30
)	

COMMENTS OF AT&T SERVICES, INC.

Stacey Black
Assistant Vice President, Federal Regulatory
AT&T Services, Inc.
1120 20th Street, N.W.
Suite 1000
Washington, DC 20036
(202) 457-2055

Michael Goggin
Alex Starr
Gary L. Phillips
David Lawson
AT&T Services, Inc.
1120 20th Street, N.W.
Suite 1000
Washington, DC 20036
(202) 457-2055

Counsel for AT&T Services, Inc.

January 14, 2016

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. NTIA’S FEE REVIEW SHOULD RESPECT FIRSTNET’S UNIQUE SELF-FUNDING CHALLENGES	3
III. NTIA’S FEE REVIEW PROCEDURES SHOULD FOSTER CERTAINTY AND PREDICTABILITY	5
A. NTIA Should Specify A Precise Timetable For Annual Fee Review	5
B. NTIA Should Address The Practical Consequences Of Rejecting FirstNet’s Fee Proposal.....	6
IV. CONCLUSION.....	8

**Before the
U.S. DEPARTMENT OF COMMERCE
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION
Washington, D.C. 20230**

In the Matter of)	
)	
Proposed Scope of NTIA’s Authority)	Docket No. 151209999-5999-01
Regarding FirstNet Fees)	RIN 0660-AA30
)	

COMMENTS OF AT&T SERVICES, INC.

I. INTRODUCTION

AT&T Services Inc. (“AT&T”), on behalf of the subsidiaries and affiliates of AT&T Inc. (collectively, “AT&T”), submits these comments on the National Telecommunications and Information Administration’s (“NTIA”) Notice of Proposed Rulemaking (“NPRM”) regarding the scope of its annual review of the First Responder Network Authority’s (“FirstNet”) fees.¹ The NPRM proposes rules and procedures for NTIA’s annual review and approval of fees imposed by FirstNet as authorized by the Middle Class Tax Relief & Job Creation Act of 2012 (the “Act”).² AT&T welcomes the opportunity to comment on NTIA’s proposed approach.

The Act established FirstNet as an independent authority within NTIA, and instructed FirstNet to deploy a nationwide public safety broadband network (“NPSBN”).³ Among other things, the Act requires FirstNet to be permanently self-funded and empowers it to assess and collect certain types of fees. Although the Act endowed FirstNet with initial funding, Congress

¹ NTIA, *Proposed Scope of NTIA’s Authority Regarding FirstNet Fees*, Notice of Proposed Rulemaking, 80 Fed. Reg. 77592 (Dec. 15, 2015) (“NPRM”).

² Middle Class Tax Relief & Job Creation Act of 2012, Pub. L. No. 112-96, Title VI, 126 Stat. 256 (codified at 47 U.S.C. §§ 1401 *et seq.*).

³ 47 U.S.C. § 1426(b)(1).

envisioned that FirstNet would become self-sustaining by monetizing its 700 MHz spectrum and collecting authorized fees.⁴ As part of this sustainability mandate, the Act directs NTIA to review FirstNet’s fees annually; indeed, fees may only be assessed if approved by NTIA.⁵

Deploying, operating, and maintaining the NPSBN in a competitive marketplace will be an unprecedented task. Challenges are bound to arise, particularly with respect to how to manage FirstNet’s business model as technology and first responder needs evolve. Preserving the NPSBN’s commercial viability will require careful planning and flexibility. NTIA recognizes that the NPSBN should be run like a business in a competitive market; it cannot be micromanaged by other agencies. Nevertheless, NTIA must discharge its responsibility to oversee FirstNet’s efforts to establish and run the NPSBN in a financially sustainable manner.

Much is still unknown about the circumstances FirstNet will confront as it deploys the NPSBN. Indeed, States must still weigh whether to participate in the NPSBN or opt-out and establish their own radio access networks (“RAN”). Likewise, demand will hinge on FirstNet’s ability to “distinguish its product in terms of features, price, and reliability” from services offered by private competitors.⁶

The NPRM acknowledges the complexity of FirstNet’s task, setting forth an appropriately modest approach to NTIA review of FirstNet’s fees. With some adjustments for practicality and predictability, NTIA is on the right path. First, NTIA should articulate clear

⁴ See 47 U.S.C. § 1427; see also S. Rep. No. 112-260, *Senate Commerce Committee Report to Accompany S. 911*, at 31 (Dec. 21, 2012) (noting that “[t]he Committee intends for [FirstNet] and the nationwide network to be self-funding” and explaining that leasing access to the 700 MHz spectrum “would provide an important source of revenue” for FirstNet); 157 Cong. Rec. S1528 (daily ed. Mar. 10, 2011) (Statement of Sen. Rockefeller) (declaring that the Act was structured so as to “not cost a dime”).

⁵ 47 U.S.C. § 1428(c).

⁶ NPRM at 77593.

timelines for fee review and approval. Second, NTIA’s review should include contingencies that address the practical consequences of NTIA rejecting FirstNet’s fees.

II. NTIA’S FEE REVIEW SHOULD RESPECT FIRSTNET’S UNIQUE SELF-FUNDING CHALLENGES

NTIA’s review of FirstNet’s fees appears properly to take into account FirstNet’s unique need to operate semi-autonomously as a business in a competitive market, but with serious operational constraints and government oversight.

The Act instructs FirstNet to deploy, operate, and maintain a NPSBN that meets three goals: interoperability, nationwide coverage, and sustainability. Congress included requirements to ensure that the NPSBN remains solvent,⁷ reinvests fees in the network,⁸ and leverages existing infrastructure to the maximum extent possible.⁹ Providing for the NPSBN’s sustainability, the Act authorizes FirstNet to collect three different types of fees: network user fees; lease fees related to network capacity (*e.g.* fees collected from covered leasing agreements); and lease fees related to network equipment and infrastructure.¹⁰ The Act contemplates oversight to ensure sustainability. FirstNet must report to Congress annually on its finances¹¹ and submit to annual

⁷ See 47 U.S.C. § 1428(b) (establishing that the total amount of fees assessed each year must be “sufficient” to “recoup the total expenses” of FirstNet in maintaining and operating the NPSBN “for the fiscal year involved”).

⁸ See *id.* § 1428(d) (requiring FirstNet to reinvest funds collected from the assessment of fees in “constructing, maintaining, operating, or improving” the network).

⁹ See *id.* § 1426(c)(3) (mandating that FirstNet must enter into agreements to utilize existing infrastructure “to the maximum extent economically desirable”).

¹⁰ *Id.* § 1426(a)(1)-(3).

¹¹ *Id.* § 1430(b) (requiring the annual report to include comprehensive details of FirstNet’s activities and financial status).

independent audits.¹² In addition, “NTIA shall review the fees assessed [by FirstNet] on an annual basis, and such fees may only be assessed if approved by the NTIA.”¹³

NTIA can ensure that FirstNet remains on track, but should not interfere unduly with needed business judgment. NTIA’s review should reflect reasoned decision-making about whether FirstNet is achieving statutory requirements. At the same time, NTIA should recognize FirstNet’s practical realities and competitive business environment.¹⁴ FirstNet will face initial challenges in a capital-intensive industry, and long-term success will turn on the ability to provide first responders affordable, reliable, and sustainable broadband service that can compete against private offerings. To do this, FirstNet will need to “employ business strategies with the flexibility and agility commonplace in the private sector.”¹⁵

As a result, the fee review NTIA proposes is modest. Although NTIA must ensure that FirstNet adheres to the Act’s mandate, it has decided to respect FirstNet’s business judgment and relative autonomy by deferring to FirstNet on decisions about the use and retention of reserves and working capital.¹⁶ It has also appropriately determined that its review of FirstNet’s fees should be on an aggregate basis, determining whether FirstNet’s proposed revenue will meet (but

¹² *Id.* § 1429(a).

¹³ *Id.* § 1428(c).

¹⁴ While FirstNet’s request for proposal (“RFP”), released on January 13, 2015, contemplates a national acquisition approach to the NPSBN, details of FirstNet’s ultimate business model will be fleshed out as bidders submit offers and FirstNet selects its primary partner. As FirstNet’s business model evolves, NTIA and FirstNet may need to revisit the fee review process and methodology to ensure full compliance with statutory mandates and sound public policy.

¹⁵ NPRM at 77593.

¹⁶ *Id.* at 77596 (noting that NTIA will not “assess whether or what level of [such] funds” FirstNet should maintain).

not exceed) expenses in a given year.¹⁷ Based on current expectations for the NPSBN, NTIA's proposed approach appears reasonable. However, given the difficult road ahead in deploying the NPSBN, NTIA's review framework should include additional safeguards to clarify the logistics of the review process and the practical consequences of NTIA rejecting FirstNet's fees.

III. NTIA'S FEE REVIEW PROCEDURES SHOULD FOSTER CERTAINTY AND PREDICTABILITY

AT&T is concerned that NTIA's fee review process may not afford FirstNet adequate time and predictability to obtain fee approval, or guidance to deal with practical challenges that may arise if NTIA does not timely approve FirstNet's fee proposal.

A. NTIA Should Specify A Precise Timetable For Annual Fee Review

A key component of FirstNet's ability to remain solvent will be its ability to set and assess fees in a timely manner. Like any business, FirstNet will need certainty that its fees will be approved in time to begin collecting for services at the start of a new fiscal year. Although the NPRM specifies the standards and process NTIA will use for fee review, it simply acknowledges that it must complete its fee review "on an annual basis."¹⁸ The NPRM does not specify when FirstNet must propose fees or how long NTIA's review process will take. AT&T proposes that NTIA provide more certainty by providing a precise timeline for fee review.

The Act makes clear that FirstNet may not charge fees unless they have been reviewed and approved by NTIA.¹⁹ To ensure that FirstNet's services are seamless, fees must be approved in time to allow FirstNet to begin imposing them at the start of each year. Accordingly, NTIA's review should build in sufficient time for FirstNet to revise and re-submit fee proposals in the

¹⁷ *Id.* at 77593.

¹⁸ *Id.* at 77593.

¹⁹ 47 U.S.C. § 1428(c).

event that NTIA rejects FirstNet’s initial proposal. If NTIA rejects FirstNet’s fee package, it may take some time for FirstNet to revise its proposal to gain NTIA’s approval.²⁰

For example, NTIA could provide a timeline that requires FirstNet to submit proposals by June 1 and establishes a deadline for NTIA to render a decision approving or rejecting the proposal by July 15. If FirstNet’s fee proposal is rejected, revised rates could be due on August 1, with NTIA issuing a decision on the new proposal by September 15. This sample schedule assumes that fees would need to be approved before the start of a new fiscal year (October 1). Depending on the interplay between the Office of Management and Budget’s (“OMB”) apportionment of FirstNet’s budget and the business environment that FirstNet confronts, a different timeline may be appropriate.²¹ In any event, establishing a concrete timeline will provide stability for FirstNet and NTIA. A clear timeline also will hold NTIA accountable, ensuring that fees are approved in time for FirstNet to provide uninterrupted service. Further, it will provide predictability for FirstNet’s private business partners to plan expenditures.

B. NTIA Should Address The Practical Consequences Of Rejecting FirstNet’s Fee Proposal

Predictability is critical in offering service in a competitive landscape. To promote predictability, in the event that a FirstNet fee proposal is rejected, FirstNet may need guidance about the reasons for the rejection and its effect on FirstNet’s ability to continue service.

²⁰ See NPRM at 77596.

²¹ While Congress does not have to appropriate new funding for FirstNet in a given fiscal year, OMB will still apportion FirstNet’s budget each year. As a result, FirstNet will need to submit its budget through the standard Department of Commerce/OMB budgeting process, which begins over a year prior to the budgeted fiscal year. With budgets established this far in advance, NTIA could require FirstNet to submit its fee proposals for review earlier in order to ensure ample time for the review and approval process to run its course.

First, NTIA should provide reasons for any rejection. NTIA states that it will approve FirstNet’s proposed fees if they are “in aggregate . . . sufficient, but not in excess of, the projected funds that FirstNet needs to recoup the total expenses required” in a given year.²² If FirstNet’s fees are rejected, FirstNet will need to return to the drawing board and adjust its budget to meet expectations. In doing so, FirstNet must satisfy itself that its revised fee plan will preserve interoperability and quality of service throughout the network, as required by the Act. Thus, if NTIA rejects FirstNet’s fee proposal, it should clearly articulate its reason(s). This will enable FirstNet to efficiently revise its proposal and re-submit it for approval.

Second, NTIA should address the possibility that FirstNet’s fees may not be approved by the start of the new fiscal year. Such timing may limit FirstNet’s ability to charge and collect fees while FirstNet develops or NTIA considers a revised proposal. The statute provides that, for FirstNet to charge fees, they have to have been approved by NTIA. Allowing a late disapproval to strip FirstNet of its ability to charge fees for the period of time it may take to revise and seek approval of a suitable fee package would undermine Congress’ goals. Congress expected the network to “meet mission-critical standards” and provide first responders with a reliable, interoperable nationwide network.²³ Limiting FirstNet’s ability to charge any fees for any period of time—no matter how small—would undermine this central Congressional goal.

NTIA’s fee review framework should include contingencies for an untimely decision. NTIA should make clear that even if FirstNet’s fees have not been approved by October 1,

²² *Id.* at 77593. AT&T agrees with NTIA’s proposed aggregate approach to reviewing and approving FirstNet’s fees. Reviewing proposed fees on an individual basis would invite unnecessary complexity and undermine efficient review.

²³ S. Rep. 112-260, at 31.

FirstNet may operate under the prior year's fees until rates for the new year have been approved. A true-up, while potentially complex, could be done once FirstNet's revised fees are approved.

Authorizing FirstNet's continued operation while fee issues are resolved is important to prevent the untenable options of FirstNet either ceasing service to first responders or providing service without payment (which may be a financial impossibility). Allowing FirstNet to continue operating under an existing fee structure would also provide a clear path forward for FirstNet and its partners, eliminating the potential for chaos if a fee proposal is rejected shortly before FirstNet's existing fee structure expires. It would also reassure first responder end users that service will not be interrupted or compromised as a result of budgetary disputes.

IV. CONCLUSION

While NTIA plays an important role in ensuring that FirstNet fulfills the Act's sustainability mandate, it must also recognize the competitive business environment in which FirstNet will launch and operate the NPSBN. FirstNet has made great strides, but much work and uncertainty remain. NTIA should provide FirstNet with a transparent and predictable fee review process, including a timeline, and authorize FirstNet's continued operation if fees have not been approved.

Respectfully submitted,

By: /s/ Michael Goggin

Stacey Black
Assistant Vice President, Federal Regulatory
AT&T Services, Inc.
1120 20th Street, N.W., Suite 1000
Washington, DC 20036
(202) 457-2055

January 14, 2016

Michael Goggin
Alex Starr
Gary L. Phillips
David Lawson
AT&T Services, Inc.
1120 20th Street, N.W., Suite 1000
Washington, DC 20036
(202) 457-2055

Counsel for AT&T Services, Inc.